Remarks/Arguments

In the Non-Final Office Action dated August 25, 2010, it is noted that claims 3-5, 12-14, and 19-21 are pending in this application; and that all the pending claims stand rejected under 35 U.S.C. §103.

No claim amendments are made at this time.

Cited Art

The following references have been cited and applied in the present Office Action: U.S. Patent Application Publication No. 2003/0227567 to Plotnick et al. (hereinafter referenced as "*Plotnick*"); U.S. Patent Application Publication No. 2002/0100041 to Rosenberg et al. (hereinafter referenced as "*Rosenberg*"); U.S. Patent Application Publication No. 2003/0005463 to Macrae et al. (hereinafter referenced as "*Macrae*"); U.S. Patent 6,002,443 to Iggulden (hereinafter referenced as "*Iggulden*"); U.S. Patent 7,177,881 to Schwesig et al. (hereinafter "*Schwesig*"); U.S. Patent 7,194,754 to Tomsen et al. (hereinafter "*Tomsen*"); and U.S. Patent Application Publication No. 2002/0144262 to Plotnick et al. (hereinafter referenced as "*Plotnick II*").

Error in the Rejections under 35 U.S.C. §103

The Examiner's attention is directed to the bottom of page 6 and at two separate locations on page 8, all in the present Office Action, because the "Mabon" reference appears to be applied erroneously against a portion of the claims. In this Office Action, Mabon is no longer applied formally in any of the rejections. Moreover, the teachings of "Mabon" used in a prior Office Action appear to have been replaced completely by Macrae.

While this error could be construed as a critical error affecting the claim rejections, it will be assumed for the sake of expediting this prosecution that the USPTO had instead intended to use the Macrae reference where "Mabon" has been recited. If this assumption is incorrect, then the Examiner is invited to inform Applicant's representative as soon as possible. Also, in the event that the assumption is incorrect, then Applicant asserts that the USPTO has failed to establish a prima facie case of obviousness and that the rejection of the claims should be withdrawn.

Rejection of Claims 3-5, 8, 12-14, and 17 under 35 U.S.C. §103

Claims 3-5 and 12-14 stand rejected under 35 U.S.C. §103 as unpatentable over Plotnick in view of Rosenberg and further in view of Macrae, and further in view of Iggulden, and further in view of Schwesig, and further in view of Tomsen. This rejection is respectfully traversed.

Claims 3 and 12 are independent claims that include similar limitations discussed below. Claims 4-5 depend from claim 3 and include all the limitations of the base independent claim while introducing limitations of their own; claims 13-14 depend from claim 12 and include all the limitations of the base independent claim while introducing limitations of their own. Since the limitations discussed below are substantially present in both of claims 3 and 12, the remarks below will be understood to pertain equally to both independent claims without further repetition, limitation, or qualification.

It has been admitted in the present Office Action that Plotnick, Rosenberg, Iggulden, and Macrae do not teach the limitation of "wherein when said browser mode is active and said television during download function is enabled …, said mode switching means is activated causing said television program mode to be active until detection of completion of said download," as defined in the claims. *See Office Action at page 5.* In an apparent attempt to cure this defect, Schwesig has again added to this mosaic of references. But the reliance on Schwesig continues to be misplaced because Schwesig fails to cure the admitted defect in the teachings of the combination of Plotnick, Rosenberg, Iggulden, and Macrae. It should also be noted that Schwesig was not proffered by the USPTO for any teachings related to the claimed limitations reproduced above.

Schwesig appears to teach the use of background downloading. However, there is no teaching in Schwesig in the cited section of col. 11 or elsewhere within the reference that switching of any kind takes place from one mode to another mode while the download is in progress and until the download is completed. Schwesig merely states that downloading takes place in the background. Schwesig even indicates that the downloading could occur automatically when updates of media files become available.

There is no teaching or suggestion in Schwesig that a television during download function even exists in Schwesig. Thus, Schwesig is not capable of enabling such a function as required by the claims.

Switching of modes is not suggested or contemplated by Schwesig. Particularly, Schwesig does not appear to teach any kind of switching from a browser mode to a television program mode. To be sure, the claimed limitation calls for mode switching from an active browser mode to an active television program mode, when the claim states that "when said browser mode is active ..., said mode switching means is activated causing said television program mode to be active." Both of these claimed modes are defined in the claims as being modes for the display device. But Schwesig does not teach, show, or suggest that these modes are active and switched during a download. Simply put, Schwesig appears to teach only that the download is performed in the background. Schwesig does not even remotely suggest any mode switching during a download at all.

The USPTO appears to be unclear and inconsistent about the teachings of Schwesig. On page 5 through the top of page 6 in the present Office Action, the USPTO asserts that Schwesig allegedly teaches the limitation calling for "wherein when said browser mode is active and said television during download function is enabled, ..., s**aid mode switching means is activated causing said television program mode to be active until detection of completion of said download.**" [Emphasis supplied]. Then in a complete reversal of position, also on page 6 of the present Office Action, the USPTO expressly admits that Schwesig is silent regarding the specific claim feature calling for "upon a download above a threshold time being detected, s**aid mode switching means is activated causing said television program mode to be active until detection of completion of said download.**" [Emphasis supplied]. This latter admission by the USPTO is completely consistent with the remarks above that Schwesig does not teach, show, or suggest mode switching of any kind for the display during a download.

Schwesig does not detect completion of the download. Schwesig does not detect or measure the duration of a download. There is no teaching in Schwesig that "said television program mode [is caused by the mode switching means] to be active until detection of completion of said download," as defined in the claims. Since Plotnick, Rosenberg, Iggulden, and Macrae were admitted by the USPTO to lack any teachings for this limitation and since Tomsen was not applied to this limitation, it is submitted that Schwesig in combination with Plotnick, Rosenberg, Iggulden, Macrae, and Tomsen does not teach, show, or suggest all the limitations of independent claims 3 and 12 and the claims dependent thereon.

Tomsen was apparently combined with Plotnick, Rosenberg, Iggulden, Macrae, and Schwesig for teachings allegedly specific to the limitation for "upon a download above a threshold time being detected, **switching modes** until detection of completion of said download." But this is not a verbatim recitation of the claimed limitation. *See Office Action at page 6.* The claimed limitation actually states that "upon a download above a threshold time being detected, **said mode switching means is activated causing said television program mode to be active** until detection of completion of said download." At the very least, the USPTO's inaccurate representation of the correct claim language gives rise to a failure to establish a prima facie case of obviousness because the claim language presented by the USPTO is substantively in error and is not Applicant's claim language.

Even if one were to assume that the correct claim language were intended to be included in the Office Action on page 6, it is still apparent that Tomsen does not teach switching modes at all and Tomsen is not at all related to or concerned with downloads. Tomsen does appear to utilize a webpad interactive display in conjunction with a television display. *See Tomsen in Figures 508 and at col. 7, line 58 through col. 9, line 37.* The webpad appears to allow the user to interact with a displayed interactive advertisement to make purchases and the like. The purchasing activity is handled and displayed via the webpad, according to Tomsen. After periods of user inactivity or at the end of a commercial break, the regular program content is displayed. *See Tomsen in Figure 8 at steps 810, 812, and 814.* But there is no teaching in Tomsen that the advertisement and the regular program content displayed on the television represent two different modes as required by the claims. Even if one were to assume solely for the sake of argument herein, that the advertisement and the regular program content displayed on the television represented two different switched modes, an assumption with which Applicant neither agrees nor acquiesces, Tomsen lacks any teaching or suggestion that such assumed switching occurs as a result of the "detection of the completion of said download" as defined in the claims. Tomsen is not at all concerned with download activity in deciding what is displayed on the webpad or on the television. Hence, the combination of Plotnick, Rosenberg, Iggulden, Macrae, Schwesig, and Tomsen does not teach, show, or suggest the elements in independent claims 3 and 12.

None of the references teach the switching between the television program mode (currently active) and the interactive application mode (as the last viewed item), as defined

in the claims. Contrary to the USPTO assertion on page 4 of the present Office Action, Rosenberg and Plotnick teach that switching between items **within the same mode**.

Plotnick appears to teach the display of television transmission signals and the display of different application program output signals. *See paragraph [0005] of Plotnick.* In paragraph [0027], Plotnick clearly states that hot keys can cause the system resources to be defocused from one application program and then focused onto another application program. Plotnick's application programs are all in the same mode of operation, namely, the mode of operating application programs. Switching among Plotnick's application programs by defocusing and then focusing does not require or suggest any mode change at all.

In Plotnick at paragraphs [0027]-[0031], it is clear that the teachings are expressly directed to shifting focus to any one of the application programs 34, 36, or 38 or to a default application program selected from application programs 34, 36, or 38. Plotnick expressly teaches the switching between different applications, which means that the switching is confined to the same mode of operation not a different mode. For example, there is no teaching that these hot keys can cause a mode switch from the display of different application program output signals to the display of television transmission signals. Plotnick does not switch focus to a television transmission signal mode from his application mode or vice versa.

While Plotnick does teach a last vied list, the use of that list does not result in a mode switch. Plotnick's last viewed list includes only entries for various applications and the last viewed list does not include any entry for any television transmission signal. *See Plotnick at paragraph [0031].* Thus, any attempt by Plotnick to use his last viewed list as a tool in switching will result in Plotnick remaining in the display of application programs, albeit a possibly different application program. But it will not result in any kind of mode switch.

The Examiner has cited Rosenberg at paragraphs [0039] and [0050] as relating to "switching between modes upon receipt of a hot key command." *See Office Action at page 4.* A careful review of these paragraphs fails to show any remote connection to hot keys or mode switching. There is no recitation by Rosenberg in these paragraphs of any concept identical to, or even remotely resembling, a hot key activating a mode switch.

In light of the remarks above, it is submitted that the combination of Plotnick, Rosenberg, Macrae, Iggulden, Schwesig, and Tomsen lack fails to teach all the elements of claims 3 and 12 and the claims dependent thereon. It is believed that the elements of these claims would not have

been obvious to a person of ordinary skill in the art upon a reading of Plotnick, Rosenberg, Macrae, Iggulden, Schwesig, and Tomsen, either separately or in combination. Thus, it is submitted that claims 3-5 and 12-14 are allowable under 35 U.S.C. §103. Withdrawal of this rejection is respectfully requested.

Rejection of Claims 19-21 under 35 U.S.C. §103

Claims 19-21 stand rejected under 35 U.S.C. §103 as being unpatentable over Plotnick in view of Rosenberg and further in view of Macrae, and further in view of Iggulden, and further in view of Schwesig, and further in view of Tomsen, and further in view of Plotnick II. This rejection is respectfully traversed.

Independent claim 19 includes limitations relating to downloading and switching modes while the download is in progress similar to those found in claims 3 and 12, as discussed above. To wit, claim 19 states in part that, "said remote control signals include a television-during-download signal generated by the remote control device; when said display device is in the interactive application mode, a download is initiated, and the download has not been completed, said mode switching means is activated causing said television program mode to be active in said display device while the download continues toward completion." In view of this similarity with the limitation in claims 3 and 12, the remarks presented above with respect to claims 3 and 12 will be understood to apply equally herein without further repetition, limitation, or qualification.

From those earlier remarks, it is clear that none of the applied references to Plotnick, Rosenberg, Macrae, Iggulden, Schwesig, and Tomsen even hint at the limitations for downloading and mode switching while a download is in progress. The present Office Action readily admits that many of these references are silent with regard to any teachings relevant to these claimed limitations.

The addition of Plotnick II does not remedy the defects in the teachings of Plotnick, Rosenberg, Macrae, Iggulden, Schwesig, and Tomsen all discussed above. Plotnick II briefly mentions that advertising opportunities exist when users are changing channels or retrieving information from a hard disk or a server. There is no mention or suggestion that there are two different operating modes. Plotnick II also fails to teach that the mode can be switched from an interactive application mode to a television program mode while a download is being completed. Plotnick II is merely adding an advertising feed to the existing television feed during channel

changes or data retrieval. As such, the combination of Plotnick II with Plotnick, Rosenberg, Macrae, Iggulden, Schwesig, and Tomsen does not teach, show, or suggest all the limitations of claim 19 and the claims dependent thereon.

In light of the remarks above, it is submitted that the combination of Plotnick, Rosenberg, Macrae, Iggulden, Schwesig, Tomsen, and Plotnick II fails to teach all the elements of independent claim 19 and the claims dependent thereon. It is believed that the elements of these claims would not have been obvious to a person of ordinary skill in the art upon a reading of Plotnick, Rosenberg, Macrae, Iggulden, Schwesig, Tomsen, and Plotnick II, either separately or in combination. Thus, it is submitted that claims 19-21 are allowable under 35 U.S.C. §103. Withdrawal of this rejection is respectfully requested.

Conclusion

In view of the foregoing, it is respectfully submitted that all the claims pending in this patent application are in condition for allowance. Entry of this amendment, reconsideration, and allowance of all the claims are respectfully solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner contact the Applicant's attorney at (609) 734-6813, so that a mutually convenient date and time for a telephonic interview may be scheduled for resolving such issues as expeditiously as possible.

In the event there are any errors with respect to the fees for this response or any other papers related to this response, the Director is hereby given permission to charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account No. 07-0832.

Respectfully submitted,

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